

April 8, 2010

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Re: *State of Delaware v. Charles L. Rogers*
Case No.: 0804005406

Date Submitted: April 5, 2010
Date Decided: April 8, 2010

MEMORANDUM OPINION

Dear Counsel:

The defendant, Charles L. Rogers (hereinafter “Rogers”), was arrested on April 5, 2008 for the offense of Driving While Under the Influence of Alcohol (“DUI”) in violation of 21 *Del. C.* § 4177 (a) and seven (7) other traffic violations. Trial was held on March 8, 2010, in the Court of Common Pleas, New Castle County, State of Delaware. Rogers was found guilty of DUI and three other traffic violations. The Court moved to sentencing immediately following trial and the State attempted to have Rogers sentenced as a second offender.¹ Challenges to previous convictions are governed by 21 *Del. C.* § 4177B (e) (5), which states:

A person may not challenge the validity of any prior or previous conviction, unless that person first successfully challenges the prior or previous conviction in the court in which the conviction arose and provides written notice of the

¹ “Whoever is convicted of a violation of subsection (a) of this section shall [f]or a second offense, be fined not less than \$575 nor more than \$2,300 and imprisoned not less than 60 days nor more than 18 months. The minimum sentence for a person sentenced under this paragraph may not be suspended.”

specific nature of the challenge in the present proceeding to the prosecution at least 20 days before trial.

The State moved to have Rogers sentenced as a second-offender for the offense of DUI pursuant to 21 *Del. C.* § 4177 (d) (2) on the basis of a prior conviction of DUI in Delaware stemming from a May 7, 2004 arrest. Rogers does not dispute that the offense is a qualifying first offense and the date of the prior conviction comes within the statutory five (5) year period for second offense treatment under 21 *Del. C.* § 4177 (d) (2). However, Rogers argues the Attorney General is required to enter into the record at sentencing, a certified copy of Defendant's driving record which shows the prior conviction for a violation of 21 *Del. C.* § 4177 when the State is seeking penalties as a second offender.

Rogers argues the State's reliance upon a computer print-out of his motor vehicle record, included within the Court's file, is insufficient and unreliable to show a prior conviction. He argues that the State has the burden of proving a prior offense as a prerequisite to seek enhanced penalties as a second offender; and without a certified driving record, the State cannot meet that burden. The State counters that the print-out is sufficient, since it is generated by the Court staff and is routinely relied upon by the Court and the parties as record of prior traffic offenses. Additionally, the State has attached a copy of Defendant's certified driving record to its brief. The certified driving record is consistent with the computer print-out included in the Court's file indicating that Defendant has a prior qualifying conviction and the conviction at issue is a second offense.

The Law

Delaware law affords the sentencing judge broad discretion in admitting and considering evidence presented at sentencing.² The due process clause of the Fifth

² *Mayes v. State*, 604 A.2d 839 (Del. 1992).

Amendment prohibits a criminal defendant from being sentenced on the basis of information which lacks minimal indicia of reliability.³ In dealing with facts at sentencing, the U.S. Supreme Court has held it is appropriate that facts relevant to sentencing be proved by a preponderance of the evidence and that this standard generally satisfies due process.⁴ The Delaware Supreme Court has recognized that “[c]ourt records are entitled to a presumption of regularity.”⁵ At sentencing, the Court commonly relies upon court records and computer print-outs for criminal history and driving records.

Discussion

The computer generated print-out is a record obtained through the Delaware Criminal Justice Information System (“DELJIS”). DELJIS is a state agency charged with maintaining an accurate and efficient criminal justice information system to meet the needs of criminal justice agencies.⁶ Its duty is imposed by statute which also imposes obligations and penalties for misuse or inappropriate distribution. Traffic convictions, including DUI convictions, are required to be reported to and maintained by DMV pursuant to the Department of Public Safety and 21 *Del. C.* § 4177 (j). There has been no evidence produced that the computer print-outs included in the Court’s files lack “minimal indicia of reliability.”

Defendant relies on *State v. Wise* to support his claim that the State is required to produce a certified driving record to seek second offender status during sentencing.⁷ In *Wise*, the Defendant pled guilty to DUI.⁸ The State sought to have Wise sentenced as a second offender based on a prior conviction in Maryland. Wise disputed the reliability of a computer print-out of his driving record showing the prior Maryland conviction. The Court held that

³ *Id.* at 843.

⁴ *United States v. Watts*, 519 U.S. 148 (1997).

⁵ *Johnson v. State*, 797 A.2d 1206 (Del. 2002).

⁶ 11 *Del. C.* § 8602 (3)(4).

⁷ *State v. Wise*, 2006 WL 2405810 (Del. Com. Pl.).

⁸ *Id.*

fundamental fairness requires that the State produce a certified copy of Delaware record to support its position when the defendant challenges the record.⁹ The facts of this case are distinguishable from *Wise* because in the case *sub judice*, the prior offense is a Delaware arrest and conviction and the computer print-out is easily able to be verified for accuracy by court personnel.

Opinion And Order

To conclude that the information relied upon in the computer print-out is unreliable would be inconsistent with the statutory scheme requiring the maintenance of motor vehicle records. Therefore, the driving record print-out meets the required minimum indicia of reliability and it is appropriate for the Court to rely upon the records to determine prior convictions. Additionally, the State attached a certified copy of Defendants driving record to its brief indicating that Defendant is a second offender. The clerk will schedule the matter for sentencing at the earliest convenience of the counsel and the Court.

IT IS SO ORDERED this 8th day of April, 2010.

John K. Welch
Judge

/jb

cc: Ms. Juanette West, Scheduling Case Manager
CCP, Criminal Division

⁹ *Id.*